



CABINET OFFICE

HISTORICAL SECTION

Hepburn House, Marsham Street, London, SW1P 4HW

Telephone: 01-211 -6566

Our Ref: H.0420

17 February 1981

Dear Alan,

BRITISH CLASSIFIED INFORMATION IN US GOVERNMENT ARCHIVES

I am about to write you on two or three topics which have arisen since your visit to the UK last October, but before I proceed with this present letter on the safeguarding of British classified information in your governmental archives, I should like to repeat my personal thanks for your visit and your concern over the problems which our discussions have done much to dispel; and to echo the gratitude which all my colleagues in Whitehall have expressed about your excellent exposition of the records scene in Washington and your suggestions how this might affect our domestic records interests.

I was pleased to receive from Peter Bulstrode copies of the Notes for the record which you made of your discussions with me and my colleagues - both collectively and in individual Departments. The only complaint about these Notes which I have had to express (in the comments which I have relayed to you through Peter) is that the records of the general meetings do not do adequate credit to your spell-binding discourses on NARS activities and future developments: these were tours de force which my colleagues and I will not forget for many a long year.

Our main concern in all this has of course been over the safety of British classified information held by US government departments, and the continued protection of over-age British material held by NARS which we still deem to be sensitive for one or more of several possible reasons. We were comforted by the assurances which you gave of the sympathetic treatment of these issues, including the normal protection for 30 years of British classified information, despite your own progressive move towards a 20-year line by 1988.

/ As you know

Mr Edwin A Thompson
Director
Records Declassification Division
National Archives and Records Service
WASHINGTON D C 20408

Following your return home I circulated to the appropriate UK Departments, copies of the various systematic review guidelines which you left with me; and I understand that one or two of the specialised Departments, including those for whom Peter Bulstrode is acting as general spokesman, may be taking up with you points affecting the review of the records of their counterparts. But I have separately endeavoured to assemble the views of all Departments on the document issued under Executive Order 12065, Section 3-404: Foreign Government Information Guidelines of 5 March 1980. (These do not include any on the "intelligence-related" aspects of FGI, with which Peter will also deal separately). Comments on the FGI paper have tended to be general rather than particular, but I enclose an extract from a letter from Judy Robertson, UKAEA, about the references to FGI on nuclear programmes and fuel requirements.

For the rest, the matter of unanimous concern was the absence, in the declassification guidelines, of any reference to British classified information passed orally. As we understand it the position is that in the event that US recipients have subsequently recorded such information for the advice of their home departments, the resultant document is of US origin and the contents would not then necessarily be treated as British originated information. You made this point in your discussion and observed that this interpretation could be placed on many documents of US origin recording 'casual' conversations with British Ministers or officials or even relating to set discussions where there was no jointly classified formal record.

Our security instructions on this issue now include the following advice -

"whenever UK and US officials hold conversations which the UK regards as classified, this and the level of classification must always be made clear to the US Department concerned".

However this instruction is relatively recent and there is the possibility in records now coming up for declassification review, that US representatives may have reported back to their Departments conversations with their UK counterparts which anteceded this instruction and we should be grateful if the FGI guidelines of 5 March 1980 could be amended at a suitable early opportunity, to cover this eventuality. This might be achieved by the following revision of paragraph 2 under B: the Definition of FGI:

"Documents originated by the United States that contain classified information provided in any manner, including conversations or any informal meeting where no joint record is made, to the United States by foreign governments with the expectation, expressed or implied, that the information will be held in confidence."

I have underlined this last clause in the existing entry, since the expectation that information given in confidence would be held in confidence is the crux of the whole matter.

In the event that there is need to consult, in either direction, we hope that wherever possible departments having a similar function on either side of the Atlantic will communicate directly with each other, ie. the US Department of the Treasury with HM Treasury; the Department of Defense with the Ministry of Defence; the Department of Energy with the UKAEA etc. However, where the records have already left departmental care or where the issues involved are of universal rather than departmental application, it may fall to your department to make the running, or for one Department here to coordinate the several views. In the latter event

you may wish to write to the FCO or MOD or other principal Departments as appropriate. But should the need arise, do not hesitate to write if necessary to me or to Peter Bulstrode, in the Cabinet Office.

Identification of records after 20-30 years may be a problem but I have assured my colleagues that in the event that particular items are in doubt or dispute, copies would be provided for the other side to inspect.

I am sorry if some of the above observations seem elementary and obvious, but as you were kind enough to invite our advice it is sensible that we should express even the most minor misgivings; and I trust that you will have no difficulty in taking our points on board. In the event that formal amendment of the guidelines is not yet possible, I hope that NARS reviewers can nevertheless be advised of our apprehensions - particularly about information passed orally.

I am copying this letter to the Departments here who attended our meetings.

Yours ever
Theo

H L THEOBALD

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

National Archives and Records Service
Washington, DC 20408



March 25, 1981

Mr. H. L. Theobald
Historical Section
Cabinet Office
Hepburn House
Marsham Street
London, SW1P 4HW
ENGLAND

Dear Theo:

Thank you very much for your letter of 17 February (your ref. H.0420). I especially appreciate your kind remarks concerning my exposition of the records scene in Washington.

I will be turning my attention to the comments made by you and others on my notes of the October visit to London in the next few weeks. This letter is focused--as was yours--on the question of protection of British classified information found in and among U.S. records.

The matter of appropriate protection of British (and other foreign country) originated classified information passed orally is of considerable concern to all of us. It is a particularly worrisome matter as Executive Order 12065 drives us to review U.S. records containing orally provided information before it becomes 30 years old.

The problem begins with identifying in U.S. originated documents information provided by British (and other) officials. In the vast majority of cases this fact is readily apparent and even the nationality of the source can be determined. The second problem is more difficult--whether the information was provided with the expectation, expressed or implied, that the information shared be held in confidence. At times this expectation is clear and unequivocal. But in most cases the undertaking by the receiving U.S. official is not clear from the evidence in the document and the presence of a U.S. classification marking is not conclusive.

Our reviewers are instructed to review all documents containing orally provided foreign government information with great care. We search for every clue and indication of the intent of the provider of the information and the understanding of the recipient. Sometimes the sensitive content of the information provides the only clue as to the probable intentions of both parties. The staff has been advised that if there is any doubt as to the appropriate action to take in a specific case, that it should be withdrawn and subjected to another review when it becomes 30 years old. To ensure that every reviewer in NARS has this instruction I have issued an information memorandum on this very topic. A copy is enclosed.

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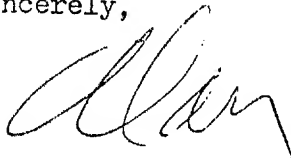
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The amendment to the language of Section B.2 of the Guidelines for systematic review of Foreign Government Information proposed in your letter certainly would remove doubt as to the elements clearly to be included under the heading, "provided in any manner." I have shared your letter and the information memorandum with my colleagues in Defense, State, Energy, CIA, NSC, and the Information Security Oversight Office. They also are considering how to immediately provide instruction to declassification reviewers on this matter. When these guidelines are reviewed next year we will more formally consider your language change.

Having said all of this, I can now tell you that the problem may be resolved in large part by amending Executive Order 12065. Among many other matters being considered is a proposal that the U.S. Government revert to the earlier practice of reviewing classified information as it becomes 30 years old. One of the telling reasons behind proposing this change is the concern abroad--and especially among our closest allies--regarding our procedures for protecting foreign government information provided in confidence for a minimum of 30 full years. If this proposal to fall back to a 30-year line is accepted, we will have removed in large measure this particular concern on your part. I will keep Roger, Peter, and you informed as the deliberations on amendments proceed. In the meantime you may be sure all of us will do our very best to continue to protect your sensitive information provided orally.

Thank you also for including the comments of Judy Robertson concerning nuclear programs and fuel requirements. I am consulting with DOE's Office of Classification on points she raises.

Sincerely,



EDWIN A. THOMPSON
Director
Records Declassification Division

Enclosure

CC: - CIA ✓

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General
Services
Administration

National Archives
and

Records Service Washington, DC 20408

Date : March 26, 1981

Reply to
Attn of : NND

Subject: NND Staff Information Memo - Foreign Government Information #1,
Review of information provided orally.

To : NNDA, NNDG, NNDR

The guidelines for systematic review of foreign government information 30 years old or older, dated 5 March 1980 (issued by N on April 1, 1980) defines "Foreign government information" in Section B. The second part of that definition covers documents originated by the United States that contain classified information provided "in any manner to the United States by foreign governments...." These words should be interpreted as follows:

1. The terms "in any manner" are intended to include any conversations or any informal meetings with foreign government officials where no joint record is made of the conversation or proceedings.

2. U.S. originated documents containing information provided orally during such conversations or informal meetings will be carefully examined to determine whether the nature of the information shared or the circumstances of its transmittal or the nature of the information itself evidences any intention or expectation that the information will be held in confidence. Information less than 30 years old will be especially carefully examined in this regard.

3. Reviewers of such documents in doubt as to the releasability of such foreign government information should refer it to their supervisor for final determination.

Any questions concerning this matter should be referred to NND (523-3165).

EDWIN A. THOMPSON
Director
Records Declassification Division

CC: - CIA ✓

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